

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 586

Introduced by Senator Pavley

February 17, 2011

An act to add Sections 953.5 and 14409.5 to the Financial Code, and to amend Section 368 of the Penal Code, relating to banks and credit unions.

LEGISLATIVE COUNSEL'S DIGEST

SB 586, as amended, Pavley. Banks and credit unions: signature stamps.

Existing law, the Banking Law, regulates the organization and operations of state-organized banks, and the California Credit Union Law regulates the organization and operation of credit unions, the willful violation of which is a crime. Existing law does not regulate the issuance or use of a signature stamp in financial transactions.

This bill would define "signature stamp" and regulate the issuance of a signature stamp by a state-organized bank or credit union to an accountholder and the use of the signature stamp by the accountholder in financial transactions with a bank or credit union.

Existing law prohibits various types of elder abuse, punishable by incarceration, fines, or both incarceration and fines, including imprisonment in the county jail not exceeding one year, or by a fine not to exceed \$1,000, for specified types of abuse involving theft, embezzlement, forgery, fraud, or identity theft.

This bill would add to those offenses the use of a signature stamp in a financial transaction without the express written authorization of a stamp holder who is an elder or dependant adult, as specified. The bill would increase the amount of each of the fines otherwise imposed for

the existing law offenses, and would provide that the additional fine amount be allocated to the adult protective services agency, or equivalent elder abuse prevention agency, of the county prosecuting the offense. *The bill would provide for restitution for a violation of these provisions.*

Because this bill would create new crimes, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 953.5 is added to the Financial Code, to
2 read:

3 953.5. (a) As used in this section, “signature stamp” means a
4 rubber or other synthetic stamp or device that is used to accurately
5 imitate the signature of an individual.

6 (b) A bank shall only issue a signature stamp to an existing
7 accountholder if either (1) the accountholder is present to request
8 the stamp *and an employee of the bank witnesses and acknowledges*
9 *in writing that the signature stamp was requested by the*
10 *stampholder*, or (2) the requesting accountholder’s signature has
11 been notarized on an appropriate form *approved and issued by the*
12 *bank*.

13 (c) A bank that issues a signature stamp to an accountholder
14 shall (1) inform the accountholder of the risks associated with loss
15 or misuse of the signature stamp, ~~and~~ (2) specify, in consultation
16 with the accountholder, a maximum dollar amount that may be
17 withdrawn in a single transaction authorized by the accountholder
18 by use of the signature stamp, *and (3) establish, in consultation*
19 *with the accountholder, a limit on the total amount of funds that*
20 *may be held in an account that is authorized to be accessed by use*
21 *of a signature stamp. If deposits to an account exceed the limit*
22 *established pursuant to this subdivision, or if the account is*
23 *overdrawn, the bank shall attempt to verify that the accountholder*
24 *is aware of the excessive deposits or overdraft, and shall take all*

1 *reasonable measures to ensure the safety of the account, including,*
2 *but not limited to, freezing the account until verification is obtained*
3 *from the accountholder. Nothing in this section shall be construed*
4 *to limit the authority of an accountholder to raise or lower the*
5 *limit on an account in consultation with an employee of the bank.*

6 (d) A bank shall only open a new account for a person using a
7 signature stamp to open the account if an employee of the bank
8 witnesses the affixing of the stamp by the stampholder or person
9 assisting the stampholder in the stampholder's presence.

10 (e) A bank shall only grant a primary accountholder's request
11 to add an additional signatory authority *using a signature stamp*
12 to an existing account if either (1) an employee of the bank
13 witnesses the affixing of the stamp *and acknowledges in writing*
14 *that the signature stamp was affixed* by the stampholder or person
15 assisting the stampholder in the stampholder's presence, or (2) the
16 requesting accountholder's signature has been notarized on an
17 appropriate form *approved and issued by the bank. For purposes*
18 *of this section, "signatory authority" means the authority given*
19 *to an individual to utilize a signature stamp with the permission*
20 *of the primary accountholder.*

21 (f) A bank shall only issue a Medallion Signature Guarantee
22 requested by use of a signature stamp, if an employee of the bank
23 witnesses and acknowledges in writing that the signature stamp
24 was affixed by the stampholder or person assisting the stampholder
25 in the stampholder's presence. *For purposes of this section a*
26 *"Medallion Signature Guarantee" means a guarantee of*
27 *authenticity issued by a financial institution for an accountholder's*
28 *signature of approval for the transfer of a financial securities*
29 *product, including, but not limited to, approved signature*
30 *guarantees issued pursuant to the Securities Transfer Agents*
31 *Medallion Program, the Stock Exchanges Medallion Program,*
32 *and the New York Stock Exchange Medallion Signature Program.*

33 (g) Any person who uses a signature stamp in violation of
34 subdivision (d) or (e) of Section 368 of the Penal Code shall, in
35 addition to the penalties set forth therein, be liable for restitution
36 of all funds fraudulently obtained thereby, including the monetary
37 value of any goods or services so obtained.

38 SEC. 2. Section 14409.5 is added to the Financial Code, to
39 read:

1 14409.5. (a) As used in this section, “signature stamp” means
2 a rubber or other synthetic stamp or device that is used to accurately
3 imitate the signature of an individual.

4 (b) A credit union shall only issue a signature stamp to an
5 existing accountholder if either (1) the accountholder is present to
6 request the stamp, *and an employee of the credit union witnesses*
7 *and acknowledges in writing that the signature stamp was*
8 *requested by the stampholder*, or (2) the requesting accountholder’s
9 signature has been notarized on an appropriate form *approved and*
10 *issued by the credit union*.

11 (c) A credit union that issues a signature stamp to an
12 accountholder shall (1) inform the accountholder of the risks
13 associated with loss or misuse of the signature stamp, ~~and~~ (2)
14 specify, in consultation with the accountholder, a maximum dollar
15 amount that may be withdrawn in a single transaction authorized
16 by the accountholder by use of the signature stamp, *and* (3)
17 *establish, in consultation with the accountholder, a limit on the*
18 *total amount of funds that may be held in an account that is*
19 *authorized to be accessed by use of a signature stamp. If deposits*
20 *to an account exceed the limit established pursuant to this*
21 *subdivision, or if the account is overdrawn, the credit union shall*
22 *attempt to verify that the accountholder is aware of the excessive*
23 *deposits or overdraft, and shall take all reasonable measures to*
24 *ensure the safety of the account, including, but not limited to,*
25 *freezing the account until verification is obtained from the*
26 *accountholder. Nothing in this section shall be construed to limit*
27 *the authority of an accountholder to raise or lower the dollar limit*
28 *on an account in consultation with an employee of the credit union*.

29 (d) A credit union shall only open a new account for a person
30 using a signature stamp to open the account if an employee of the
31 credit union witnesses the affixing of the stamp by the stampholder
32 or person assisting the stampholder in the stampholder’s presence.

33 (e) A credit union shall only grant a primary accountholder’s
34 request to add an additional signatory authority, *using a signature*
35 *stamp*, to an existing account if either (1) an employee of the credit
36 union witnesses the affixing of the stamp *and acknowledges in*
37 *writing that the signature stamp was affixed by the stampholder*
38 *or person assisting the stampholder in the stampholder’s presence,*
39 *or* (2) the requesting accountholder’s signature has been notarized
40 on an appropriate form *approved and issued by the credit union*.

1 *For purposes of this section, “signatory authority” means the*
2 *authority given to an individual to utilize a signature stamp with*
3 *the permission of the primary accountholder.*

4 (f) A credit union shall only issue a Medallion Signature
5 Guarantee requested by use of a signature stamp, if an employee
6 of the credit union witnesses and acknowledges in writing that the
7 signature stamp was affixed by the stamp holder or person assisting
8 the stamp holder in the stamp holder’s presence. *For purposes of*
9 *this section a “Medallion Signature Guarantee” means a guarantee*
10 *of authenticity issued by a financial institution for an*
11 *accountholder’s signature of approval for the transfer of a*
12 *financial securities product, including, but not limited to, approved*
13 *signature guarantees issued pursuant to the Securities Transfer*
14 *Agents Medallion Program, the Stock Exchanges Medallion*
15 *Program, and the New York Stock Exchange Medallion Signature*
16 *Program.*

17 ~~(g) Any person who knowingly violates the provisions of this~~
18 ~~section, shall be subject to all of the applicable penalties set forth~~
19 ~~in subdivisions (d) and (e) of Section 368 of the Penal Code, and~~
20 ~~shall be held liable for restitution of all funds fraudulently obtained~~
21 ~~in violation of this section, including the monetary value of any~~
22 ~~goods or services obtained using funds obtained in violation of~~
23 ~~this section.~~

24 (g) *Any person who uses a signature stamp in violation of*
25 *subdivision (d) or (e) of Section 368 of the Penal Code shall, in*
26 *addition to the penalties set forth therein, be liable for restitution*
27 *of all funds fraudulently obtained thereby, including the monetary*
28 *value of any goods or services so obtained.*

29 SEC. 3. Section 368 of the Penal Code is amended to read:

30 368. (a) The Legislature finds and declares that crimes against
31 elders and dependent adults are deserving of special consideration
32 and protection, not unlike the special protections provided for
33 minor children, because elders and dependent adults may be
34 confused, on various medications, mentally or physically impaired,
35 or incompetent, and therefore less able to protect themselves, to
36 understand or report criminal conduct, or to testify in court
37 proceedings on their own behalf.

38 (b) (1) Any person who knows or reasonably should know that
39 a person is an elder or dependent adult and who, under
40 circumstances or conditions likely to produce great bodily harm

1 or death, willfully causes or permits any elder or dependent adult
2 to suffer, or inflicts thereon unjustifiable physical pain or mental
3 suffering, or having the care or custody of any elder or dependent
4 adult, willfully causes or permits the person or health of the elder
5 or dependent adult to be injured, or willfully causes or permits the
6 elder or dependent adult to be placed in a situation in which his or
7 her person or health is endangered, is punishable by imprisonment
8 in a county jail not exceeding one year, or by a fine not to exceed
9 twelve thousand dollars (\$12,000), 50 percent of which shall be
10 allocated to the adult protective services agency, or equivalent
11 elder abuse prevention agency, of the county prosecuting the
12 offense, or by both that fine and imprisonment, or by imprisonment
13 in the state prison for two, three, or four years.

14 (2) If in the commission of an offense described in paragraph
15 (1), the victim suffers great bodily injury, as defined in Section
16 12022.7, the defendant shall receive an additional term in the state
17 prison as follows:

18 (A) Three years if the victim is under 70 years of age.

19 (B) Five years if the victim is 70 years of age or older.

20 (3) If in the commission of an offense described in paragraph
21 (1), the defendant proximately causes the death of the victim, the
22 defendant shall receive an additional term in the state prison as
23 follows:

24 (A) Five years if the victim is under 70 years of age.

25 (B) Seven years if the victim is 70 years of age or older.

26 (c) Any person who knows or reasonably should know that a
27 person is an elder or dependent adult and who, under circumstances
28 or conditions other than those likely to produce great bodily harm
29 or death, willfully causes or permits any elder or dependent adult
30 to suffer, or inflicts thereon unjustifiable physical pain or mental
31 suffering, or having the care or custody of any elder or dependent
32 adult, willfully causes or permits the person or health of the elder
33 or dependent adult to be injured or willfully causes or permits the
34 elder or dependent adult to be placed in a situation in which his or
35 her person or health may be endangered, is guilty of a
36 misdemeanor. A second or subsequent violation of this subdivision
37 is punishable by a fine not to exceed four thousand dollars (\$4,000),
38 50 percent of which shall be allocated to the adult protective
39 services agency, or equivalent elder abuse prevention agency, of

1 the county prosecuting the offense, or by imprisonment in a county
2 jail not to exceed one year, or by both that fine and imprisonment.

3 (d) Any person who is not a caretaker who violates any provision
4 of law proscribing theft, embezzlement, forgery, or fraud, or who
5 violates Section 530.5 proscribing identity theft, or who uses a
6 signature stamp, as defined in subdivision (a) of Sections 953.5
7 and 14409.5 of the Financial Code, in a financial transaction
8 without the knowledge and express written authorization of the
9 stampholder, ~~in each case~~, with respect to the property or personal
10 identifying information of an elder or a dependent adult, and who
11 knows or reasonably should know that the victim is an elder or a
12 dependent adult, is punishable by imprisonment in a county jail
13 not exceeding one year, or in the state prison for two, three, or four
14 years, when the moneys, labor, goods, services, or real or personal
15 property taken or obtained is of a value exceeding nine hundred
16 fifty dollars (\$950); and by a fine not exceeding two thousand
17 dollars (\$2,000), 50 percent of which shall be allocated to the adult
18 protective services agency, or equivalent elder abuse prevention
19 agency, of the county prosecuting the offense, by imprisonment
20 in a county jail not exceeding one year, or by both that fine and
21 imprisonment, when the moneys, labor, goods, services, or real or
22 personal property taken or obtained is of a value not exceeding
23 nine hundred fifty dollars (\$950).

24 (e) Any caretaker of an elder or a dependent adult who violates
25 any provision of law proscribing theft, embezzlement, forgery, or
26 fraud, or who violates Section 530.5 proscribing identity theft, or
27 who uses a signature stamp, as defined in subdivision (a) of
28 Sections 953.5 and 14409.5 of the Financial Code, in a financial
29 transaction without the express written authorization of the
30 stampholder, ~~in each case~~, with respect to the property or personal
31 identifying information of that elder or dependent adult, is
32 punishable by imprisonment in a county jail not exceeding one
33 year, or in the state prison for two, three, or four years when the
34 moneys, labor, goods, services, or real or personal property taken
35 or obtained is of a value exceeding nine hundred fifty dollars
36 (\$950), and by a fine not exceeding two thousand dollars (\$2,000),
37 50 percent of which shall be allocated to the adult protective
38 services agency, or equivalent elder abuse prevention agency, of
39 the county prosecuting the offense, by imprisonment in a county
40 jail not exceeding one year, or by both that fine and imprisonment,

1 when the moneys, labor, goods, services, or real or personal
2 property taken or obtained is of a value not exceeding nine hundred
3 fifty dollars (\$950).

4 (f) Any person who commits the false imprisonment of an elder
5 or a dependent adult by the use of violence, menace, fraud, or
6 deceit is punishable by imprisonment in the state prison for two,
7 three, or four years.

8 (g) As used in this section, “elder” means any person who is 65
9 years of age or older.

10 (h) As used in this section, “dependent adult” means any person
11 who is between the ages of 18 and 64, who has physical or mental
12 limitations which restrict his or her ability to carry out normal
13 activities or to protect his or her rights, including, but not limited
14 to, persons who have physical or developmental disabilities or
15 whose physical or mental abilities have diminished because of
16 age. “Dependent adult” includes any person between the ages of
17 18 and 64 who is admitted as an inpatient to a 24-hour health
18 facility, as defined in Sections 1250, 1250.2, and 1250.3 of the
19 Health and Safety Code.

20 (i) As used in this section, “caretaker” means any person who
21 has the care, custody, or control of, or who stands in a position of
22 trust with, an elder or a dependent adult.

23 (j) Nothing in this section shall preclude prosecution under both
24 this section and Section 187 or 12022.7 or any other provision of
25 law. However, a person shall not receive an additional term of
26 imprisonment under both paragraphs (2) and (3) of subdivision
27 (b) for any single offense, nor shall a person receive an additional
28 term of imprisonment under both Section 12022.7 and paragraph
29 (2) or (3) of subdivision (b) for any single offense.

30 (k) In any case in which a person is convicted of violating these
31 provisions, the court may require him or her to receive appropriate
32 counseling as a condition of probation. Any defendant ordered to
33 be placed in a counseling program shall be responsible for paying
34 the expense of his or her participation in the counseling program
35 as determined by the court. The court shall take into consideration
36 the ability of the defendant to pay, and no defendant shall be denied
37 probation because of his or her inability to pay.

38 SEC. 4. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O